

REMARKS

The pending Office Action addresses claims 1-35. Claims 2-5, 13-16, and 25 are withdrawn from consideration, and remaining claims 1, 6-12, 17-24, and 26-35 stand rejected. Reconsideration is respectfully requested in view of the amendments and remarks submitted herewith.

Amendments to the Claims

Applicants have amended independent claims 1, 12, 24 and 32 to recite a “U-shaped” receiver member. Support for this amendment can be found throughout the specification, for example at paragraph [0021]. Dependent claims 2-4, 6-11, 13-15, 17-19, 21, 23, 26-27, 29-30, 33 and 35 are amended to provide antecedent basis in light of the amended independent claims. Furthermore, claims 20, 28 and 34 are cancelled.

No new matter has been added.

Rejection Pursuant to 35 U.S.C. §102

The Office Action rejects claims 1, 6-12, 17-24, and 26-35 pursuant to 35 U.S.C. §102(b) as being anticipated by US Patent Application Publication No. 2003/0045879 A1 of Minfelde et al. (“Minfelde”), arguing that Minfelde teaches each and every limitation of Applicants’ claims. Applicants respectfully disagree.

Claims 1, 7-12, 17-19, 21-23, 32-33, 35

Independent claims 1, 12, and 32 each recite a spinal anchoring device having a bone-engaging member, a U-shaped receiver member movably coupled to the bone-engaging member and adapted to seat a spinal fixation element, and a fastening element adapted to mate to the U-shaped receiver member to lock a fixation element in a fixed position relative to the U-shaped receiver member while allowing the U-shaped receiver member to move freely relative to the bone-engaging member.

Minfelde discloses a lateral connector having a first component (4) that engages a head (9) of a bone screw (1), and a second component (14) that engages an extension (13) that extends from the first component (4). The only component of Minfelde that can be considered to be a U-shaped

receiver member that is movably coupled to the bone-engaging member is the first component (4). The first component (4), however, does not have a fastening element that locks a fixation element therein while allowing the first component (4) to move freely relative to the bone screw (1). The fastening element (42) used with the first component (4) merely mates the first component (4) directly to the bone screw (1). As explained in paragraph [0049] of Minfelde, “the plug 42 when tightened exerts a pressure on the screw 37 in order to press it against the bearing surface 8 of the first part 4 of the connector, and thereby to immobilize the assembly....” The fastening element (42) does not include anything that would allow it to lock a fixation element within the first component (4) while allowing free movement of the first component (4) relative to the bone screw (1). In fact, the first component is not even configured to receive any type of fixation element therein, as the extension (13) forms a fixation element. Therefore, independent claims 1, 12, and 32 distinguish over Minfelde and represent allowable subject matter. Claims 7-11, 17-19, 21-23, 33 and 35 are allowable at least because they depend from an allowable base claim.

Claims 24, 26-27 and 29-31

Independent claims 24 recites a method for correcting spinal deformities that includes coupling a spinal fixation element to a U-shaped receiver member on a plurality of anchoring devices and locking the spinal fixation element to the U-shaped receiver member on each anchoring device while allowing free movement of the U-shaped receiver member relative to a bone-engaging member on each anchoring device.


Minfelde does not teach or even suggest coupling a spinal fixation element to a U-shaped receiver member, much less coupling a fixation element to a plurality of anchoring devices such that the fixation element extends between adjacent vertebrae. As explained above, the first component (4) of Minfelde, which is the only component that can be considered to be a U-shaped receiver member that is coupled to a bone-engaging member, does not receive any type of spinal fixation element therein. It merely receives a plug (42). As was also discussed above, the plug (42) locks the first component (4) into a fixed position relative to the bone screw (1). It does not allow the first component to move freely relative to the bone screw (1) while locking any type of fixation element therein. Therefore, claim 24 distinguishes over Minfelde and represents allowable subject matter. Claims 26-27 and 29-31 are allowable at least because they depend from an allowable base claim.

Conclusion

In conclusion, Applicants submit that all claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicant if such communication is deemed to expedite prosecution of this application.

Respectfully submitted,

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